19 50

File No. B Agri D.R./50

Legal Dept

B **BRANCH**

Subject:— L.A. Bill No XLII of 1950

A Bill to amend the Bombay Agricultural Debtors Relief Act 1947

Bom. Act No. XXVII of 1950

P-24
E

File No. B. Agri. Debt. Relief /50

Gen. 194 e.

810-B

As regards the question regarding the proposal of the High Court to amend the Bombay Agricultural Debtors' Relief Act so as to permit pleaders to appear subject xxxxx to the withdrawal of the permission in special cases, it does not appear that the position has been in any way x changed since 1948. The amendment made in 1948 in sec.42 of the Act permits Courts to allow pleaders to appear in cases in which such appearance is necessary in public interest. It may be noted in this connection that it was not for the first time in 1939 that the Legislature banned the appearance of pleaders before such tribunals. In the Dekkhan Agriculturists, Relief Act which was enacted in 1879 sec. 68 was inserted banning the appearance of pleaders before Conciliators and Village-Munsiffs. Hon'ble Mr. Hope who was in charge of the Bill in the Governor General's Council observed as follows in regard to Sec.68:-

" It may be true that where a case involving even a moderate amount is intricate owing to mortgages or other exceptional circumstances, a competent pleader may be of much use both to the parties and to the Court. On the other hand, it must be admitted that the pleader who often took rayats' cases would lose his custom); that in simple suits a pleader can often add nothing of value to which is in evidence but only waste time and introduce confusion and, that the presence of pleaders predisposes some judges to decide on what counsel put before them instead of going [illegible]

is a weapon under the command of the rich [one Sub-ordinate Judge even stated that the pleader

417

into merits. Under a balance of such consideration the draft Bill follows the Madras Law,.....".

What was said in 1879 in regard to Conciliators and Village Munsiffs under the Dekkhan Agriculturists' Relief Act applies to Debt Adjustment Courts under the Bombay Agricultural Debtors' Relief Act.

2. In regard to the second part, the view taken by the District Judge, Ahmedabad, and endorsed by the High Court is not correct. It is based on an erroneous appreciation of the legal position or Courts under the Bombay Agricultural Debtors' Relief Act. Courts exercising powers under the Bombay Agricultural Debtors' Relief Act are not Civil Courts or Courts of Civil jurisdiction t which the Civil Procedure Code automatically applies. If it was so, there was no necessity for providing expressly in sec.46 that the Civil Procedure Code applies to the proceedings before such Courts except as expressly provided in the Act. For th's very reason, Boards under that the Act of 1939 were not held to be Civil Courts (Sec.47. Bom.L.R.852). In applying such provisions to the proceedings to which they are made specially applicable it has been held that this must be applied with reference to the circumstances peculiar to these matters. (See I.L.R. 9 Bom. 241). The District Judge and the High Court seem to have ignored such provisions in the Bombay Agricultural Debtors' Relief Act as sec. 51A which drew distinction between the Court functioning under the Act and a Civil Court. Moreover, it should have been realised that the Civil Procedure Code is not an exhaustive enactment and notwithstanding an absence of any provision to that effect, the Courts have allowed the appearance of persons as amicus curie to assist them in the discharge of their duties. The Debt Relief Assistants are invariably pleaders and the resolution which sanctions their appointment

expressly states that they are to be permitted to appear with the sanction of the Court. If, as stated by the High Court, it is the unanimous opinion of all Judges that the system has worked advantageously, there should not be any objection from any legal or equitable point of view, to permit them to examine or cross-examine witnesses on behalf of debtors.

3. Although the view taken by the District Judge, Ahmedabad, and endorsed by the High Court, is not correct, in order to ensure that the system which has admittedly worked so beneficially does not break down in consequence of an erroneous appreciation of the machinery set up to implement the policy of the Bombay Agricultural Debtors' Relief Act, it will be desirable to amend the Act and to provide that Debt Relief Assistants have a legal right to appear in proceedings under the Act.

3d/.....13/2.

DYM

6/6.

5c.

The requisite draft Bill is sent herewith.

2. The subject matter of the Bill falls under entries in 18, 30, 65 of List II in the Seventh Schedule to the Constitution of India. The Bill does not require any sanction or recommendation. It is not necessary to reserve the Bill for the consideration of the President with refere-nce to article 254(2) of the Constitution.

Sd/.....14/7.

Additional Secretary to Government

U. R. to D. D. No 10000 dt. the 14th July 1950

DTR.
7/6.
So.

Local Department.

The necessary draft amendment is sent herewith. It may be inserted in the draft Bill already sent as clause 9 xxx and the remaining clauses renumbered accordingly.

Sd/.....30/8.

Additional Secretary to Government.

U.R. to D.D.No.12451, dated the 30th August 1950.

DNR.

7/6.

Se.

All that the High Court has decided in the case of Somabhai Vs.Narandas, 51 Bom.L.R.461 is that under section 19(1) of the Bombay Agricultural Debters Relief Act, 1947 only such suits, appeals, applications for execution and proceedings can be transferred which were pending at the date when an application under section 4 could be made to the Court set up under the Act. The High Court Judgment has put a correct interpretation on the provisions of the Act. It is accordance with the object of the Act and calls for no amendment thereof.

Sd/.....21/9.

Additional Secretary to Government

U.R. to D.D.No. 13427 dated, 21-9-1950.

DTR.

7/6.

So.

XI

19/20

No. 196-L

Immediate.

Legal Department

Council Hall, Poona, 26th October 1950.

From

Shri J.R. Dhurandhar,

Additional Secretary to the Government of Bombay,

Legal Department.

To

The Secretary to the Governor of Bombay.

Subject:- The Bombay Agricultural Debtors Relief (Amendment) Bill, 1950.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy of the Bombay Agricultural Debtors Relief(Amendment) Bill, 1950, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 4th and the 13th October 1950, respectively.

2. The subject- matter of the Bill falls under entries 18, 30 and 65 in List II in the Seventh Schedule to the Constitution of India. As the Bill does not relate to any matter enumerated in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution of India.

3. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

4 .....

4. I also forward herewith one copy of each of ~~these~~ items.

1.	Bill as introduced in the Bombay Legislative Assembly with the Statement of the Objects and Reasons.
2.	Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.
3.	Bill as read for the third time and passed by the Bombay Legislative Council.
4.	Extracts from the proceedings of the Bombay Legislative Assembly dated the 4th October 1950 and of the Bombay Legislative Council dated the 13th October 1950.

Nos. 1, 2 and ~~3~~ and two copies of ~~these~~ item No.3 of the papers noted in the margin. The Bill was not referred to a Select Committee.

Yours faithfully,

Sd/.....25/10.

Additional Secretary to Government.

Through:

The Secretary to the Government of Bombay,
Development Department.

DYR.
7/6.
5c.

No. G.S. 3287.

From

The Secretary to the Governor of Bombay.

To

The Additional Secretary to Government,
Legal Department.

Government House
Bombay, November 21, 1950.

Subject: The Bombay Agricultural Debtors Relief (Amendment) Bill, 1950.

Sir,

With reference to your letter No. 196-L, dated October 26, 1950, I am to return herewith the authentic copy of the Bombay Agricultural Debtors Relief (Amendment) Bill, 1950, with His Excellency the Governor's assent signified thereon.

Yours faithfully,

(L.H.Hadkarni).

Secretary to the Governor of Bombay.

20233.
6-11-50.
R.

DTR.

ACTS.

Publication of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No.15557.

Bombay Castle, 7th November 1950.

Letter to the Secretary to the Governor, No.196-L dated the 26th October 1950.

Letter from the Secretary to the Governor, No.G.S. 3287, dated the 2nd November 1950.-

" With reference to your letter No. 196-L, dated October 26, 1950, I am to return herewith the authentic copy of the Bombay Agricultural Debtors Relief(Amendment) Bill, 1950, with His Excellency the Governor's assent signifed thereon."

RESOLUTION :- The law should be published as Bombay Act No. XXXVII of 1950, in the Bombay Government Gazette dated the 8th November 1950.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Development Department with reference to the Memorandum from that Department No. ADR/5650-C, dated the 18th September 1950.

By order of the Governor of Bombay,

S.L.Chaudhari.

Assistant Secretary to Government,

~~Copies Extra.~~

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the " Bombay Government Gazette ". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XLII OF 1950.

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

Bom. XXVIII of 1947.

WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1947, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1950.

Bom. XXVIII of 1947.

Amendment of section 2 of Bom. XXVIII of 1947.

2. In section 2 of the Bombay Agricultural Debtors Relief Act, 1947 (hereinafter called the said Act), after clause (7), the following new clause shall be inserted, namely :—

" (7*a*). ' merged State bank ' means a bank incorporated as such in merged territories and notified by the State Government in the Official Gazette for the purposes of this Act as a merged State bank ; "

Amendment of section 3 of Bom. XXVIII of 1947.

3. In section 3 of the said Act, in clause (*v*), the word " and " shall be deleted and in clause (*vi*), the word " and " shall be added at the end and after clause (*vi*), the following new clause shall be added, namely :—

" (*vii*) any sum due to a merged State bank."

Amendment of section 26 of Bom. XXVIII of 1947.

4. In section 26 of the said Act,—

(*a*) in sub-section (*2*), for the words "or scheduled bank" the words "scheduled bank or merged State bank" shall be substituted;

(*b*) in sub-section (*3*), for the words "or the scheduled bank" the words "the scheduled bank or the merged State bank" shall be substituted;

(*c*) in sub-section (*4*), for the words "the co-operative society and the scheduled bank" the words "the co-operative society, the scheduled bank and the merged State bank" shall be substituted and for the words "or the scheduled bank" the words "the scheduled bank or the merged State bank" shall be substituted.

Amendment of section 32 of Bom. XXVIII of 1947.

5. In section 32 of the said Act, in sub-section (*2*),—

(*a*) in clause (*ii*), the following shall be added at the end, namely :—

"unless all the creditors declare in writing that the unsecured debts due may not be charged on any of the properties of the debtor";

(*b*) in clause (*iii*), after sub-clause (*f*) the following new sub-clause shall be inserted, namely :—

"(*ff*) debts due to merged State banks,"

Amendment of section 33 of Bom. XXVIII of 1947.

6. For sub-section (*2*) of section 33 of the said Act the following shall be substituted, namely :—

"(*2*) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditor's receipt therefor, the Court shall prepare a scheme embodying the terms of an award to be passed under this section for adjustment of the debts and shall send the scheme to the Primary Land Mortgage Bank situated in the local area and if there is no such Primary Land Mortgage Bank in that local area, to the Bombay Provincial Co-operative Land Mortgage Bank, for acceptance within a period of two months from the date of receipt by it of the scheme. If the Primary Land Mortgage Bank or the Bombay Provincial Co-operative Land Mortgage Bank, as the case may be, agrees to accept the scheme, or does not inform the Court within the period of the said two months that it does not agree to accept the scheme, the Court shall make an award in the prescribed form directing that the Land Mortgage Bank concerned shall pay the creditors in cash the debt as finally scaled down or if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the State Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immovable property of the debtor".

Amendment of section 38 of Bom. XXVIII of 1947.

7. In section 38 of the said Act,—

(*a*) in sub-section (*1*), after the words "under this Act" the words "if it is in respect of debts charged on the properties of the debtor" shall be inserted;

(*b*) in sub-section (*3*), the words "so registered" shall be deleted.

8. In section 40 of the said Act, for the words "or award under this Act" the words "under this Act or an award registered under this Act" shall be substituted. Amendment of section 40 of Bom. XXVIII of 1947.

9. In section 46 of the said Act, the following proviso shall be added, namely :— Amendment of section 46 of Bom. XXVIII of 1947.

"Provided that the Court may in a proper case and on such terms as may appear to it to be just, exercise its powers to add or strike out parties under rule 10 of Order I of the said Code in any proceeding pending before it under section 4 or 24, notwithstanding the fact that such addition, or striking out of parties is to be made after the date specified in section 4 or 24, as the case may be, has elapsed."

10. In section 46B of the said Act, for the words "It shall be the duty of the Court making an award" the words and figures "Where an award is required to be registered under section 38, it shall be the duty of the Court making the award" shall be substituted. Amendment of section 46B of Bom XXVIII of 1947.

11. For section 46C of the said Act the following new section shall be substituted, namely :— Substitution of section 46C by new section.

"46C. If a party files an appeal against an award under section 43 and if such award has been registered under section 38, it shall be the duty of the Court in which the appeal is filed to send to the Sub-Registrar or the Registrar to whom a certified copy of the award has been sent under section 46B, a notice regarding the institution of the appeal." Notice of appeals to Registrars.

12. In section 46F of the said Act, after the words "has been made" the words "and registered" shall be inserted. Amendment of section 46F of Bom. XXVIII of 1947.

13. After section 56 of the said Act the following new sections shall be added, namely :— Insertion of sections 57 and 58 in Bom. XXVIII of 1947.

"57(*1*). Notwithstanding anything contained in section 4 of this Act as amended by the provisions of the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories, the debtor having immovable property in any of the merged territories or his creditor may make an application under section 4 within six months from the date of the coming into operation of this Act to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area in which such immovable property is situate, and if there is no such Civil Judge to the Court of the Civil Judge (Junior Division) having jurisdiction in the said area: Special provision permitting application to court in merged territories within whose jurisdiction property of debtor is situate.

Bom. IV of 1950.

(*2*) Where an application has been made under sub-section (*1*) in calculating the total amount of debts for the purpose of section 11, the amount of debts already adjusted or deemed to be adjusted, if any, under this Act shall be excluded.

Special provision for application under section 24 in respect of land situate in merged territories.

58. Notwithstanding anything contained in section 24 of this Act as amended by the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories, an agricultural labourer entitled to apply under section 24 for a declaration that a transfer of any land situate in any of the merged territories is a mortgage, may make an application under the said section within six months from the date of the coming into operation of this Act to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area in which such land is situate, and if there is no such Civil Judge to the Court of the Civil Judge (Junior Division) having jurisdiction in the said area." Bom. IV of 1950.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to amend certain sections of the Bombay Agricultural Debtors Relief Act, 1947, mainly in view of the merger of States. Certain minor defects in the Act which have been brought to the notice of Government are also to be rectified. The following Notes on clauses explain the amendments contained in the Bill:—

Notes on Clauses.

Clauses 2, 3, 4 and 5(b).—Under section 3 of the Bombay Agricultural Debtors Relief Act, 1947, debts due to co-operative societies and scheduled banks are exempted. It is proposed to extend this concession to merged State banks which may be notified for this purpose. These clauses provide for this object.

Clauses 5(a), 7, 8, 10 and 12.—Section 32(2) (ii) provides that the amount of unsecured debts shall be charged on all the properties of the debtor. It has been brought to the notice of Government by the High Court that instances in which the creditors, for whose benefit this provision was made, have found it inconvenient to ascertain the particulars of the debtor's property. If the creditors find this provision for any reason unsuitable or hard for them it is not proper to compel them to take the trouble of finding out the properties of the debtors and to get the same charged. It is, therefore, proposed to amend sections 32(2) (ii), 38, 40, 46B and 46F of the Act and to dispense with the necessity of registering awards in cases where the debtor owns no property or the creditors do not press for a charge on any property of the debtor. These clauses deal with this point.

Clause 6.—Section 33 provides for the payment of the amount awarded by the Court to the creditors by the Land Mortgage Banks. The Banks have represented off and on that they should be given an opportunity to refuse to accept transfer of awards if deemed fit, instead of the awards being passed on to them for payment without being heard. This clause provides that the Banks shall be granted a period of two months within which they should intimate their decision to the Courts concerned.

Clause 9.—The High Court has pointed out that it is necessary to make provision for joining additional parties at any stage of the proceedings as none exists in the Bombay Agricultural Debtors Relief Act, 1947, at present. This clause provides for this.

Clause 11.—There is at present an apparent conflict between sections 46B and section 46C of the Act. Section 46B requires awards to be sent for registration to the Sub-Registrar in whose region the property mentioned in the award is situate, while section 46C requires the Court of Appeal to send a notice regarding the institution of an appeal to the Sub-Registrar of the sub-district in which the Court is situate. The notice of appeal should be sent to the same Sub-Registrar who registers the award under section 46B. Section 46C is, therefore, proposed to be recast to achieve this object.

Clause 13.—Debtors having immoveable property in any of the merged States could not take advantage of the Bombay Agricultural Debtors Relief Act. It is proposed to give them an opportunity to make applications to Courts for adjustment of debts. The concession is also to be extended to agricultural labourers who are entitled to apply under section 24 for a declaration that a transfer of any land situate in any of the merged territories, is a mortgage.

Dated the 14th September 1950. (Signed) VAIKUNTH L. MEHTA.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

Bombay, dated the 20th September 1950.

MD-IV 4—2

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XLII OF 1950.

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

(As read for the third time and passed by the Legislative Assembly on the 4th October 1950.)

WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1947, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Bom. XXVIII of 1947.

Short title.

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1950.

Amendment of section 2 of Bom. XXVIII of 1947.

2. In section 2 of the Bombay Agricultural Debtors Relief Act, 1947 (hereinafter called the said Act), after clause (7), the following new clause shall be inserted, namely :—

"(7*a*) 'merged State bank' means a bank incorporated as such in merged territories and notified by the State Government in the *Official Gazette* for the purposes of this Act as a merged State bank ; "

Amendment of section 3 of Bom. XXVIII of 1947.

3. In section 3 of the said Act, in clause (*v*), the word " and " shall be deleted and in clause (*iv*), the word " and " shall be added at the end and after clause (*vi*), the following new clause shall be added, namely :—

" (*vii*) any sum due to a merged State bank,"

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Amendment of section 26 of Bom. XXVIII of 1947.

4. In section 26 of the said Act,—

(*a*) in sub-section (*2*), for the words "or scheduled bank" the words "scheduled bank or merged State bank" shall be substituted;

(*b*) in sub-section (*3*), for the words "or the scheduled bank" the words "the scheduled bank or the merged State bank" shall be substituted;

(*c*) in sub-section (*4*), for the words "the co-operative society and the scheduled bank" the words "the co-operative society, the scheduled bank and the merged State bank" shall be substituted and for the words "or the scheduled bank" the words "the scheduled bank or the merged State bank" shall be substituted.

Amendment of section 32 of Bom. XXVIII of 1947.

5. In section 32 of the said Act, in sub-section (*2*),—

(*a*) in clause (*ii*), the following shall be added at the end, namely:—

"unless all the creditors declare in writing that the unsecured debts due may not be charged on any of the properties of the debtor";

(*b*) in clause (*iii*), after sub-clause (*f*) the following new sub-clause shall be inserted, namely:—

"(*ff*) debts due to merged State banks,"

Amendment of section 33 of Bom. XXVIII of 1947.

6. For sub-section (*2*) of section 33 of the said Act the following shall be substituted, namely:—

"(*2*) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditor's receipt therefor, the Court shall prepare a scheme embodying the terms of an award to be passed under this section for adjustment of the debts and shall send the scheme to the Primary Land Mortgage Bank situated in the local area and if there is no such Primary Land Mortgage Bank in that local area, to the Bombay Provincial Co-operative Land Mortgage Bank, for acceptance within a period of two months from the date of receipt by it of the scheme. If the Primary Land Mortgage Bank or the Bombay Provincial Co-operative Land Mortgage Bank, as the case may be, agrees to accept the scheme, or does not inform the Court within the period of the said two months that it does not agree to accept the scheme; the Court shall make an award in the prescribed form directing that the Land Mortgage Bank concerned shall pay the creditors in cash the debt as finally scaled down or if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the State Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immovable property of the debtor".

Amendment of section 38 of Bom. XXVIII of 1947.

7. In section 38 of the said Act,—

(*a*) in sub-section (*1*), after the words "under this Act" the words "if it is in respect of debts charged on the properties of the debtor" shall be inserted;

(*b*) in sub-section (*3*), the words "so registered" shall be deleted.

8. In section 40 of the said Act, for the words "or award under this Act" the words "under this Act or an award registered under this Act" shall be substituted. Amendment of section 40 of Bom. XXVIII of 1947.

9. In section 46 of the said Act, the following proviso shall be added, namely :— Amendment of section 46 of Bom. XXVIII of 1947.

"Provided that the Court may in a proper case and on such terms as may appear to it to be just, exercise its powers to add or strike out parties under rule 10 of Order I of the said Code in any proceeding pending before it under section 4 or 24, notwithstanding the fact that such addition or striking out of parties is to be made after the date specified in section 4 or 24, as the case may be, has elapsed."

10. In section 46B of the said Act, for the words "It shall be the duty of the Court making an award" the words and figures "Where an award is required to be registered under section 38, it shall be the duty of the Court making the award" shall be substituted. Amendment of section 46B of Bom. XXVIII of 1947.

11. For section 46C of the said Act the following new section shall be substituted, namely :— Substitution of section 46C by new section.

"46C. If a party files an appeal against an award under section 43 and if such award has been registered under section 38, it shall be the duty of the Court in which the appeal is filed to send to the Sub-Registrar or the Registrar to whom a certified copy of the award has been sent under section 46B, a notice regarding the institution of the appeal." Notice of appeals to Registrars.

12. In section 46F of the said Act, after the words "has been made" the words "and registered" shall be inserted. Amendment of section 46F of Bom. XXVIII of 1947.

13. After section 56 of the said Act the following new sections shall be added, namely :— Insertion of sections 57 and 58 in Bom. XXVIII of 1947.

Bom. IV of 1950.

"57 (*1*) Notwithstanding anything contained in section 4 of this Act as amended by the provisions of the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories— Special provision permitting application to court in merged territories within whose jurisdiction property of debtor is situate.

(*a*) if any debtor was owing debts to a creditor in a merged territory on the date on which such territory merged with the Province of Bombay and if the place in which such debtor was ordinarily residing on the said date was outside such territory, such debtor, or

(*b*) his creditor

may make an application to the Court under section 4 within six months from the date of the coming into operation of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950.

Bom. of 1950.

(*2*) Nothing in sub-section (*1*) shall entitle any debtor or creditor to make an application if prior to the date of the coming into operation of the said Bombay Agricultural Debtors Relief (Amendment) Act, 1950, he could have made an application under section 4 of this Act:

Bom. of 1950.

Provided that, if the debtor had in such territory on the date on which such territory merged with the Province of Bombay any property against which the creditor could have enforced his remedy for the recovery of the debts due to him from such debtor under any law in force in such territory immediately before the said date, such debtor or his creditor shall be entitled to make an application under sub-section (*1*).

Special provision for application under section 24 in respect of land situate in merged territories.

58. Notwithstanding anything contained in section 24 of this Act as amended by the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories, an agricultural labourer entitled to apply under section 24 for a declaration that a transfer of any land situate in any of the merged territories is a mortgage, may make an application under the said section within six months from the date of the coming into operation of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950, to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area in which such land is situate, and if there is no such Civil Judge to the Court of the Civil Judge (Junior Division) having jurisdiction in the said area."

Bom. IV of 1950.

Bom. of 1950.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to amend certain sections of the Bombay Agricultural Debtors Relief Act, 1947, mainly in view of the merger of States. Certain minor defects in the Act which have been brought to the notice of Government are also to be rectified. The following Notes on clauses explain the amendments contained in the Bill:—

Notes on Clauses.

Clauses 2, 3, 4 and 5(b).—Under section 3 of the Bombay Agricultural Debtors Relief Act, 1947, debts due to co-operative societies and scheduled banks are exempted. It is proposed to extend this concession to merged State banks which may be notified for this purpose. These clauses provide for this object.

Clauses 5(a), 7, 8, 10 and 12.—Section 32(2) (ii) provides that the amount of unsecured debts shall be charged on all the properties of the debtor. It has been brought to the notice of Government by the High Court that instances in which the creditors, for whose benefit this provision was made, have found it inconvenient to ascertain the particulars of the debtor's property. If the creditors find this provision for any reason unsuitable or hard for them it is not proper to compel them to take the trouble of finding out the properties of the debtors and to get the same charged. It is, therefore, proposed to amend sections 32(2) (ii), 38, 40, 46B and 46F of the Act and to dispense with the necessity of registering awards in cases where the debtor owns no property or the creditors do not press for a charge on any property of the debtor. These clauses deal with this point.

Clause 6.—Section 33 provides for the payment of the amount awarded by the Court to the creditors by the Land Mortgage Banks. The Banks have represented off and on that they should be given an opportunity to refuse to accept transfer of awards if deemed fit, instead of the awards being passed on to them for payment without being heard. This clause provides that the Banks shall be granted a period of two months within which they should intimate their decision to the Courts concerned.

Clause 9.—The High Court has pointed out that it is necessary to make provision for joining additional parties at any stage of the proceedings as none exists in the Bombay Agricultural Debtors Relief Act, 1947, at present. This clause provides for this.

Clause 11.—There is at present an apparent conflict between sections 46B and section 46C of the Act. Section 46B requires awards to be sent for registration to the Sub-Registrar in whose region the property mentioned in the award is situate, while section 46C requires the Court of Appeal to send a notice regarding the institution of an appeal to the Sub-Registrar of the sub-district in which the Court is situate. The notice of appeal should be sent to the same Sub-Registrar who registers the award under section 46B. Section 46C is, therefore, proposed to be recast to achieve this object.

Clause 13.—Debtors having immoveable property in any of the merged States could not take advantage of the Bombay Agricultural Debtors Relief Act. It is proposed to give them an opportunity to make applications to Courts for adjustment of debts. The concession is also to be extended to agricultural labourers who are entitled to apply under section 24 for a declaration that a transfer of any land situate in any of the merged territories, is a mortgage.

Dated the 14th September 1950. VAIKUNTH L. MEHTA.

MO-VI Bk Hb 268—2

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XLII OF 1950.]

(As read for the third time and passed by the Legislative Assembly on the 4th October 1950.)

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

[Shri VAIKUNTH L. MEHTA, M.L.A.]

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Bom. Act- XXXVII of 1950

~~Bom. Act XXXVIII~~

~~L. A. BILL No. XLII~~ OF 1950.

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(As read for the third time and passed by the Legislative Assembly on the 4th October 1950.)

(As read for the third time and passed by the Legislative Council on the 13th October 1950.)

Bom. XXVIII of 1947.

WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1950.

Bom. XXVIII of 1947.

Amendment of section 2 of Bom. XXVIII of 1947.

2. In section 2 of the Bombay Agricultural Debtors Relief Act, 1947 (hereinafter called the said Act), after clause (7), the following new clause shall be inserted, namely :—

"(7*a*) 'merged State bank' means a bank incorporated as such in merged territories and notified by the State Government in the *Official Gazette* for the purposes of this Act as a merged State bank;"

Amendment of section 3 of Bom. XXVIII of 1947.

3. In section 3 of the said Act, in clause (*v*), the word "and" shall be deleted and in clause (*vi*), the word "and" shall be added at the end and after clause (*vi*), the following new clause shall be added, namely :—

"(*vii*) any sum due to a merged State bank."

Amendment of section 26 of Bom. XXVIII of 1947.

4. In section 26 of the said Act,—

(*a*) in sub-section (*2*), for the words "or scheduled bank" the words "scheduled bank or merged State bank" shall be substituted;

(*b*) in sub-section (*3*), for the words "or the scheduled bank" the words "the scheduled bank or the merged State bank" shall be substituted;

(*c*) in sub-section (*4*), for the words "the co-operative society and the scheduled bank" the words "the co-operative society, the scheduled bank and the merged State bank" shall be substituted and for the words "or the scheduled bank" the words "the scheduled bank or the merged State bank" shall be substituted.

Amendment of section 32 of Bom. XXVIII of 1947.

5. In section 32 of the said Act, in sub-section (*2*),—

(*a*) in clause (*ii*), the following shall be added at the end, namely :—

"unless all the creditors declare in writing that the unsecured debts due may not be charged on any of the properties of the debtor";

(*b*) in clause (*iii*), after sub-clause (*f*) the following new sub-clause shall be inserted, namely :—

"(*ff*) debts due to merged State banks,".

Amendment of section 33 of Bom. XXVIII of 1947.

6. For sub-section (*2*) of section 33 of the said Act the following shall be substituted, namely :—

"(*2*) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditor's receipt therefor, the Court shall prepare a scheme embodying the terms of an award to be passed under this section for adjustment of the debts and shall send the scheme to the Primary Land Mortgage Bank situated in the local area and if there is no such Primary Land Mortgage Bank in that local area, to the Bombay Provincial Co-operative Land Mortgage Bank, for acceptance within a period of two months from the date of receipt by it of the scheme. If the Primary Land Mortgage Bank or the Bombay Provincial Co-operative Land Mortgage Bank, as the case may be, agrees to accept the scheme, or does not inform the Court within the period of the said two months that it does not agree to accept the scheme, the Court shall make an award in the prescribed form directing that the Land Mortgage Bank concerned shall pay the creditors in cash the debt as finally scaled down or if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the State Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immovable property of the debtor".

Amendment of section 38 of Bom. XXVIII of 1947.

7. In section 38 of the said Act,—

(*a*) in sub-section (*1*), after the words "under this Act" the words "if it is in respect of debts charged on the properties of the debtor" shall be inserted;

(*b*) in sub-section (*3*), the words "so registered" shall be deleted.

8. In section 40 of the said Act, for the words "or award under this Act" the words "under this Act or an award registered under this Act" shall be substituted. Amendment of section 40 of Bom. XXVIII of 1947.

9. In section 46 of the said Act, the following proviso shall be added, namely :— Amendment of section 46 of Bom. XXVIII of 1947.

"Provided that the Court may in a proper case and on such terms as may appear to it to be just, exercise its powers to add or strike out parties under rule 10 of Order I of the said Code in any proceeding pending before it under section 4 or 24, notwithstanding the fact that such addition, or striking out of parties is to be made after the date specified in section 4 or 24, as the case may be, has elapsed."

10. In section 46B of the said Act, for the words "It shall be the duty of the Court making an award" the words and figures "Where an award is required to be registered under section 38, it shall be the duty of the Court making the award" shall be substituted. Amendment of section 46B of Bom. XXVIII of 1947.

11. For section 46C of the said Act the following new section shall be substituted, namely :— Substitution of section 46C by new section.

"46C. If a party files an appeal against an award under section 43 and if such award has been registered under section 38, it shall be the duty of the Court in which the appeal is filed to send to the Sub-Registrar or the Registrar to whom a certified copy of the award has been sent under section 46B, a notice regarding the institution of the appeal." Notice of appeals to Registrars.

12. In section 46F of the said Act, after the words "has been made" the words "and registered" shall be inserted. Amendment of section 46F of Bom. XXVIII of 1947.

13. After section 56 of the said Act the following new sections shall be added, namely :— Insertion of sections 57 and 58 in Bom. XXVIII of 1947.

Bom. IV of 1950.

"57 (*1*) Notwithstanding anything contained in section 4 of this Act as amended by the provisions of the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories— Special provision permitting application to court in merged territories within whose jurisdiction property of debtor is situate.

(*a*) if any debtor was owing debts to a creditor in a merged territory on the date on which such territory merged with the Province of Bombay and if the place in which such debtor was ordinarily residing on the said date was outside such territory, such debtor, or

(*b*) his creditor

may make an application to the Court under section 4 within six months from the date of the coming into operation of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950.

Bom. of 1950.

Bom. of 1950.

(*2*) Nothing in sub-section (*1*) shall entitle any debtor or creditor to make an application if prior to the date of the coming into operation of the said Bombay Agricultural Debtors Relief (Amendment) Act, 1950, he could have made an application under section 4 of this Act:

Provided that, if the debtor had in such territory on the date on which such territory merged with the Province of Bombay any property against which the creditor could have enforced his remedy for the recovery of the debts due to him from such debtor under any law in force in such territory immediately before the said date, such debtor or his creditor shall be entitled to make an application under sub-section (*1*).

Special provision for application under section 24 in respect of land situate in merged territories.

58. Notwithstanding anything contained in section 24 of this Act as amended by the Bombay Merged States (Laws) Act, 1950, in its application to the merged territories, an agricultural labourer entitled to apply under section 24 for a declaration that a transfer of any land situate in any of the merged territories is a mortgage, may make an application under the said section within six months from the date of the coming into operation of the Bombay Agricultural Debtors Relief (Amendment) Act, 1950, to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area in which such land is situate, and if there is no such Civil Judge to the Court of the Civil Judge (Junior Division) having jurisdiction in the said area."

Bom. IV of 1950.

Bom. of 1950.

Government of Bombay

LEGAL DEPARTMENT.

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